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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 FATEN ANWAR,

11 Plaintiff,

12 v.

13 USPS,

14 Defendant.

CASE NO. C22-1156JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court are (1) *pro se* Plaintiff Faten Anwar's motion to remand
17 (Remand Mot. (Dkt. # 9); Remand Reply (Dkt. # 13)) and (2) Defendant United States
18 Postal Service's ("USPS") motion to dismiss (MTD (Dkt. # 6) MTD Reply (Dkt. # 15)).
19 USPS opposes Ms. Anwar's motion to remand (Remand Resp. (Dkt. # 14); USPS Supp.
20 Br. (Dkt. # 18)), and Ms. Anwar opposes USPS's motion to dismiss (MTD Resp. (Dkt.
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1 # 12); MTD Surreply (Dkt. # 16)¹). USPS also filed supplemental briefing in response to
2 the court's September 26, 2022 order. (*See* 9/26/22 Minute Order (Dkt. # 17); USPS
3 Supp. Be. (Dkt. # 18).) The court has considered the motions, the parties' submissions
4 regarding each motion, the relevant portions of the record, and the applicable law. Being
5 fully advised,² the court DENIES Ms. Anwar's motion to remand, GRANTS USPS's
6 motion to dismiss, and DISMISSES Ms. Anwar's complaint without leave to amend and
7 without prejudice.

8 II. BACKGROUND

9 On November 15, 2021, Ms. Anwar sent court documents and a filing fee for a
10 court case in New York via certified priority mail through the USPS in Lynnwood,
11 Washington. (*See* Compl. (Dkt. # 1-1) at 2; Remand Mot. at 3-4.³) Although the
12 package itself was successfully delivered on November 17, 2021, Ms. Anwar never
13 received a return receipt. (Compl. at 2; Remand Mot. at 4.) Ms. Anwar filed a missing
14 mail trace request for the return receipt with USPS on January 7, 2022. (Compl. at 2;
15 Remand Mot. at 4; *see also* Remand Mot., Ex. 1 (Dkt. # 9-1) at 21.) USPS informed Ms.
16 Anwar via email on April 6, 2022 that it was unable to locate the missing return receipt.

17 ¹ The court reminds Ms. Anwar to comply with Local Civil Rule 7(g) when filing a
18 surreply. *See* Local Rules W.D. Wash. LCR 7.

19 ² Neither party has requested oral argument (*see* MTD at 1; Remand Mot. at 1; Remand
20 Resp. at 1; MTD Resp. at 1), and the court finds that oral argument would not be helpful to its
disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

21 ³ Ms. Anwar also cites several other incidents in which USPS allegedly failed to properly
22 handle her certified mail. (*See* Remand Mot. at 4-6.) However, each of these incidents occurred
after Ms. Anwar filed her complaint on April 26, 2022 and are therefore not properly before the
court. Accordingly, the court does not assess those incidents.

1 (See Remand Mot., Ex. 1 at 18.) On April 11, 2022, Ms. Anwar filed a complaint with
2 the USPS Office of Inspector General regarding the missing return receipt. (See *id.* at
3 19.) The USPS Office of Inspector General forwarded Ms. Anwar’s complaint as a
4 service request to the USPS Service Consumer and Industry Conduct Office. (*Id.*) On
5 April 18, 2022, USPS responded to Ms. Anwar’s service request and indicated that the
6 mail associated with the tracking number she provided was delivered in November 2021.
7 (See *id.* at 20.) It did not, however, address the missing return receipt. (See *id.*)

8 On April 26, 2022, Ms. Anwar filed a complaint against USPS in Snohomish
9 County Small Claims Court (“Small Claims Court”), alleging that USPS did not deliver
10 the return receipt to her certified priority mail and failed to locate it after she filed a
11 missing mail trace request. (See Compl. at 2.) To compensate her for the harm she
12 suffered, Ms. Anwar seeks \$1,000 in damages. (*Id.*) Ms. Anwar hired a process server
13 who served the Notice of Small Claim on a “Law Department Employee” at USPS’s
14 Washington, D.C. office on June 28, 2022. (See Remand Mot., Ex. 1 at 2-3.) According
15 to Ms. Anwar, the parties participated in a mediation on July 19, 2022, hosted by the
16 Small Claims Court, but failed to reach a resolution. (Remand Reply at 2.)

17 On August 17, 2022, USPS removed the case to federal court. (See Removal
18 Notice (Dkt. # 1).) Thereafter, USPS filed a motion to dismiss Ms. Anwar’s claim for
19 lack of subject matter jurisdiction. (See MTD.) Ms. Anwar subsequently moved to
20 remand the case to state court, arguing that USPS’s motion was untimely. (See Remand
21 Mot.)
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III. ANALYSIS

The court first evaluates Ms. Anwar's motion to remand the case to state court before turning to USPS's motion to dismiss.

A. Ms. Anwar's Motion to Remand

Ms. Anwar moves to remand this action back to Snohomish County District Court, arguing removal was not timely because USPS did not remove the case within the statutory 30-day deadline after receiving service of process. (Remand Mot. at 2 (citing 28 U.S.C. § 1446(b)(1)).) USPS responds that remand is inappropriate because it is statutorily permitted to remove actions initiated against it in state court. (*See* Remand Resp. at 4.) USPS also argues that its removal was not untimely because Ms. Anwar failed to follow the service requirements set forth in Federal Rule of Civil Procedure 4(i), and therefore has yet to properly serve the agency at all; thus, the 30-day removal period has yet to begin. (*See id.* at 2; USPS Supp. Br. at 1-2.) The court sets forth the relevant legal standard for motions to remand before turning to Ms. Anwar's motion.

1. Legal Standard for Motions to Remand

Removal of a civil action to federal district court is proper where the federal court would have original jurisdiction over the state court action. 28 U.S.C. § 1441(a); *Ramirez v. Fox Television Station, Inc.*, 998 F.2d 743, 747 (9th Cir. 1993) (citing 28 U.S.C. § 1441(a), (b)). The Postal Reorganization Act ("PRA") governs the manner in which USPS may sue or be sued and provides that "the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service." 39 U.S.C. § 409(a). The PRA further provides that, "[a]ny action

brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of [28 U.S.C. § 1441 *et seq.*]” *Id.*; *see also Cont’l Cablevision of St. Paul, Inc. v. USPS*, 945 F.2d 1434, 1436-37 (8th Cir. 1991) (holding that § 409(a) creates for USPS “an independent ground for removal from a state court to a federal court . . . to give the Postal Service, an instrumentality of the United States, the protection of a federal forum”).

Under 28 U.S.C. § 1441, “a defendant may remove to federal court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). The defendant must file its notice of removal “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading.” 28 U.S.C. § 1446(b). The 30-day period commences when a defendant is “brought under a court’s authority, by formal process.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999) (holding that removal more 44 days after defendant received a faxed copy of the complaint was not untimely where only 30 days had elapsed since defendant was formally served).⁴ The PRA provides that plaintiffs filing suit against USPS must follow the provisions of the Federal Rules of Civil Procedure “relating to service of process . . . in which the United States, its officers, or employees are parties.” 39 U.S.C. § 409(b); *see also Lynch v. USPS*, No. 21-cv-01322-SK, 2021 WL 7448623, at *2 (N.D. Cal. April 5, 2021) (stating that

⁴ Ms. Anwar argues on reply that USPS’s citation to *Murphy Bros.* is misplaced because the Eleventh Circuit held that removal was untimely. (*See Reply* at 2-3 (citing *Murphy Bros.*, 524 U.S. at 347-48)). However, Ms. Anwar does not account for the Supreme Court’s reversal of the Eleventh Circuit’s decision. (*See id.*)

1 “[f]ederal law governs service of process on the United States Postal Service” and
2 recommending a motion to set aside default be granted where plaintiff failed to comply
3 with Federal Rule of Civil Procedure 4(i) when he served USPS in state court). Rule 4(i)
4 requires a party suing the United States to deliver a copy of the summons and complaint
5 to the U.S. attorney for the district where the action is brought and send a copy of each by
6 registered mail to the U.S. Attorney General. Fed. R. Civ. P. 4(i)(1). A party suing an
7 agency or corporation of the United States, such as USPS, must also send a copy of the
8 summons and complaint by registered or certified mail to the agency or corporation itself.
9 Fed. R. Civ. P. 4(i)(2).

10 2. USPS’s Removal was not Untimely

11 Ms. Anwar argues that USPS failed to meet the 30-day removal deadline when it
12 filed its notice of removal on August 17, 2022, 51 days after USPS’s employee accepted
13 service of process. (*See* Remand Mot. at 1; Remand Reply at 2.) USPS responds that the
14 30-day period for removal has not yet begun because Ms. Anwar did not fully comply
15 with Rule 4(i) when she served USPS with her Notice of Small Claim. (*See* Remand
16 Resp. at 2 (citing *Murphy Bros.*, 526 U.S. at 347-48).) On reply, Ms. Anwar argues that
17 she was not required to comply with the Federal Rules of Civil Procedure when she
18 commenced her suit in state court. (Remand Reply at 2 (stating that the civil rules “apply
19 to a civil action after it is removed from a state court” (citing Fed. R. Civ. P. 81(c))).)

20 The court agrees with USPS that Ms. Anwar has not yet properly served USPS
21 and its notice of removal was therefore not untimely. *See Murphy Bros.*, 526 U.S. at 347-
22 48. As a plaintiff suing USPS, Ms. Anwar was required to comply with the service

procedures set forth in Rule 4(i). *See* 39 U.S.C. § 409(b) (requiring compliance with the Federal Rules of Civil Procedure in suits against USPS); *see also* Wash. Superior Ct. Civ. R. 4 (lacking any procedure for serving the United States or its instrumentalities). Accordingly, the 30-day period for removal would have been triggered when Ms. Anwar fully complied with the service requirements set forth in Rule 4(i). *See Murphy Bros.*, 526 U.S. at 347-48; 39 U.S.C. § 409(b). Here, Ms. Anwar served her Notice of Small Claims on an employee at USPS headquarters on June 28, 2022 but did not serve the U.S. Attorney for the Western District of Washington or the U.S. Attorney General. *See* Fed. R. Civ. P. 4(i)(1); (Remand Mot., Ex. 1 at 2-3). Accordingly, although USPS removed this case to federal court more than 30 days after Ms. Anwar served its employee with her Notice of Small Claims, the deadline to remove had not yet passed because USPS was not properly served per Rule 4(i). Therefore, the court finds no basis to remand this case to state court and DENIES Ms. Anwar’s motion to remand.⁵

B. USPS’s Motion to Dismiss

USPS moves to dismiss Ms. Anwar’s lawsuit under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction for the following two reasons: (1) Ms. Anwar’s claim is expressly exempted from the Federal Tort Claims Act (“FCTA”), and (2) Ms. Anwar failed to exhaust her administrative remedies. (*See* MTD

⁵ Ms. Anwar also argues in her remand motion that the harm she has suffered is due to “malice” on the part of USPS, and therefore her claim is not exempt from the Federal Tort Claims Act. (*See* Remand Mot. at 8-11.) The court, construing Ms. Anwar’s arguments liberally, interprets this argument as a response to USPS’s motion to dismiss and addresses it in the next section, accordingly.

at 1.) Ms. Anwar argues that USPS mischaracterizes her claim, as she is not bringing a claim under the FCTA, and that her claim is thus not subject to dismissal. (*See Resp. at 7-8.*) The court summarizes the legal standard for motions to dismiss under Rule 12(b)(1) before addressing each of USPS's arguments and Ms. Anwar's responses thereto.

1. Legal Standard for a Rule 12(b)(1) Motion to Dismiss

Subject matter jurisdiction is a threshold issue that goes to the court's power to hear a case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction may be facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In resolving a facial attack, the challenger must persuade the court that the allegations of the complaint are insufficient on their face to invoke the jurisdiction of the court. *See id.* However, "[t]he party invoking federal jurisdiction bears the burden of establishing" that jurisdiction exists. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

2. The Court's Jurisdiction over Suits Against USPS is Limited

The United States is immune from suit unless it consents to be sued. *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995). "When the United States consents to be sued, the terms of its waiver of sovereign immunity define the extent of the court's jurisdiction." *United States v. Mottaz*, 476 U.S. 834, 841 (1986). Any waiver of immunity is strictly construed in favor of the United States. *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992). The PRA, which waives USPS's sovereign immunity on a limited basis, provides that the FTCA "shall

1 apply to tort claims arising out of activities of the Postal Service.” 39 U.S.C. § 409(c);
 2 *see also Janakes v. USPS*, 768 F.2d 1091, 1093 (9th Cir. 1985) (stating that § 409(a)
 3 “does not confer subject matter jurisdiction for actions in which the Service is a party, but
 4 requires a ‘substantive legal framework’ of federal law to confer federal subject matter
 5 jurisdiction”). The FTCA is a limited waiver of sovereign immunity that permits legal
 6 claims against the United States for the “negligent or wrongful act or omission of any
 7 employee of the Government while acting within the scope of his office or employment.”
 8 28 U.S.C. § 1346(b)(1).

9 *a. Ms. Anwar Failed to Exhaust Administrative Remedies*

10 Where a cause of action requires a party to first exhaust an administrative remedy
 11 before filing suit, “the requirement of an administrative claim is jurisdictional,” and
 12 therefore “must be strictly adhered to.” *Brady v. United States*, 211 F.3d 499, 502 (9th
 13 Cir. 2000). The FTCA and the PRA impose such a prerequisite to initiating a lawsuit
 14 against USPS, requiring that they first file a claim with the Postal Regulatory
 15 Commission (“PRC”). *See* 28 U.S.C. § 2675(a) (“An action shall not be instituted upon a
 16 claim against the United States . . . unless the claimant shall have first presented the claim
 17 to the appropriate Federal agency and his claim shall have been finally denied by the
 18 agency”); 39 U.S.C. § 3662(a) (requiring a party who believes USPS is not
 19 operating in conformity with federal law to file a complaint with the PRC). Therefore,
 20 this court only has subject matter jurisdiction over FTCA claims against USPS in which
 21 the plaintiff has exhausted the administrative remedies before the PRC.
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1 Here, Ms. Anwar did not comply with the FTCA’s exhaustion requirement before
 2 filing her Notice of Small Claim against USPS. Ms. Anwar filed a complaint with the
 3 USPS Office of Inspector General (*see* Remand Mot., Ex. 1 at 18-19), which was
 4 transferred to the USPS Service Consumer and Industry Conduct Office, but she did not
 5 file a complaint with the PRC as the statute requires, *see* 39 U.S.C. § 3662(a).⁶ Without
 6 evidence that Ms. Anwar exhausted her remedies, this court lacks subject matter
 7 jurisdiction over her claim and must therefore dismiss it. *Brady*, 211 F.3d at 502.

8 *b. Ms. Anwar’s Claim is Expressly Exempt by the FTCA*

9 Even if Ms. Anwar had exhausted her administrative remedies before filing suit,
 10 this court would still lack subject matter jurisdiction over her claim because it is
 11 expressly exempt by the FTCA.

12 The FTCA expressly exempts certain types of claims from its scope. *See* 28
 13 U.S.C. § 2680; *Molzof v. United States*, 502 U.S. 301, 311 (1992) (“Through the § 2680
 14 exceptions, Congress has taken steps to protect the Government from liability that would
 15 seriously handicap efficient government operations.”). The postal service exception
 16 provides that the FTCA’s waiver of sovereign immunity does not extend to “any claim
 17 arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.”
 18 28 U.S.C. § 2680(b). Such claims are barred by sovereign immunity. *Anderson v. USPS*,
 19 761 F.2d 527, 528 (9th Cir. 1985) (applying 28 U.S.C. § 2680(b) to hold that the
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21 ⁶ USPS presents a letter it sent to Ms. Anwar on June 13, 2022, alerting her to the
 22 necessity of filing an administrative claim before filing suit and directing her to the statutes and
 regulations governing the complaint process. (*See* Vogel Decl. (Dkt. # 19) ¶ 2, Ex. A at 2-3.)

1 petitioner’s “tort claim against the Postal Service for loss of his package . . . was barred
2 by sovereign immunity”).

3 Here, Ms. Anwar’s lawsuit seeks damages related to USPS’s failure to deliver (or
4 negligent transmission of) her signed return receipt (or “postal matter”). (*See* Compl.
5 (describing USPS’s failure to provide her with a signed return receipt).) Ms. Anwar’s
6 claim is therefore barred by sovereign immunity and must be dismissed. *See Rogers v.*
7 *Gross*, No. 5:13-cv-488-BO, 2013 WL 5755537, at *2 (E.D. N.C. Oct. 23, 2013)
8 (determining that plaintiff’s claim that USPS failed to provide return receipt was barred
9 by 28 U.S.C. § 2680(b)).

10 Ms. Anwar argues that her claim does not fall within the postal service exception
11 to the FTCA because the conduct she complains of is “impossible to classify as
12 negligence,” and is instead an “egregious violation[] of [her] right to be able to utilize the
13 USPS certified mail as a proof of service.” (*See* MTD Resp. at 8; *see also* Remand Mot.
14 at 8 (accusing USPS of “malice”).) Construed liberally, Ms. Anwar’s claim could be
15 interpreted to accuse USPS of either (1) intentionally—rather than negligently—
16 depriving her of its services, or (2) breaching an implied contract to deliver the return
17 receipt. *See Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (“[W]e construe *pro*
18 *se* pleadings liberally.”).

19 However, Ms. Anwar cannot establish subject matter jurisdiction under either
20 alternative construction. First, federal courts lack jurisdiction over claims of intentional
21 tampering with postal services under the FTCA’s postal services exception. *See, e.g.,*
22 *Dolan v. USPS*, 546 U.S. 481, 489 (2006) (holding that § 2680(b) bars *any* claim for

1 “injuries arising, directly or consequentially” from USPS’s failure to deliver mail,
 2 including “harms arising from the nondelivery or late delivery of sensitive materials”);
 3 *Levasseur v. USPS*, 543 F.3d 23, 24 (1st Cir. 2008) (citing *Dolan* for the conclusion that
 4 § 2680(b) bars claims of intentional misconduct against USPS). Second, if Ms. Anwar’s
 5 claim against USPS were for breach of contract, the court would still lack subject matter
 6 jurisdiction because she failed to exhaust administrative remedies. *Marco v. USPS*, No.
 7 C 98-0876 SI, 1998 WL 296367, at *2 (N.D. Cal. June 1, 1998) (dismissing contract
 8 claim against USPS for failure to exhaust administrative remedies).

9 Because the United States has not waived sovereign immunity with respect to Ms.
 10 Anwar’s claim, this court does not have subject matter jurisdiction over her claim, and it
 11 therefore must be dismissed. *See Anderson*, 761 F.2d at 528. Accordingly, the court
 12 GRANTS USPS’s motion to dismiss Ms. Anwar’s complaint.

13 **C. Leave to Amend**

14 “In general, a court should liberally allow a party to amend its pleading.” *Sonoma*
 15 *Cnty. Ass’n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013); *see*
 16 Fed. R. Civ. P. 15(a). Dismissal without leave to amend is proper, however, if any
 17 amendment would be futile. *Sonoma Cnty. Ass’n of Retired Emps.*, 708 F.3d at 1117
 18 (“[D]ismissal without leave to amend is improper unless it is clear . . . that the complaint
 19 could not be saved by any amendment.” (quoting *Polich v. Burlington N., Inc.*, 942 F.2d
 20 1467, 1472 (9th Cir.1991))).

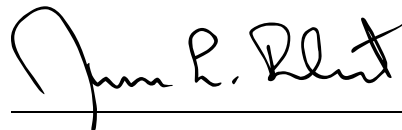
21 Here, it is clear that Ms. Anwar’s complaint cannot be saved by any amendment.
 22 As discussed above, Ms. Anwar’s claim against USPS to recover damages for its failure

1 to remit a signed return receipt is barred by sovereign immunity. *See* 28 U.S.C.
2 § 2680(b); *see Anderson*, 761 F.2d at 528. Therefore, the court dismisses Ms. Anwar
3 action without leave to amend.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the court DENIES Ms. Anwar's motion to remand
6 (Dkt. # 9), GRANTS USPS's motion to dismiss (Dkt. # 6), and DISMISSES Ms.
7 Anwar's complaint without leave to amend and without prejudice.

8 Dated this 14th day of October, 2022.

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11 JAMES L. ROBART
12 United States District Judge
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